

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 UNITED STATES OF AMERICA,

4 v.

16 CR 747 (AKH)

5 ZIMMIAN TABB,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 April 4, 2017  
12:30 p.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN,

12 District Judge

13  
14 APPEARANCES

15 JOON H. KIM  
16 Acting United States Attorney for the  
17 Southern District of New York  
18 DAVID DENTON, JR.  
19 Assistant United States Attorney

20 RICHARD E. SIGNORELLI  
21 Attorney for Defendant  
22  
23  
24  
25

1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your  
3 appearances for the record.

4 MR. DENTON: Good afternoon, your Honor. David Denton  
5 for the government.

6 THE COURT: Good afternoon.

7 MR. SIGNORELLI: Good afternoon, Judge. Richard  
8 Signorelli. With me is my client, Mr. Tabb.

9 THE COURT: Good afternoon, Mr. Signorelli.  
10 Good afternoon, Mr. Tabb. You may be seated.  
11 The defendant has made a motion for various relief.  
12 I'll hear you on that, Mr. Signorelli.

13 MR. SIGNORELLI: Thank you, Judge.

14 We have filed both many moving papers and reply  
15 papers.

16 THE COURT: I've read all the papers.

17 MR. SIGNORELLI: Then I'll keep my remarks as brief as  
18 possible.

19 THE COURT: You can argue to whatever extent you think  
20 you need to argue.

21 MR. SIGNORELLI: Thank you for that opportunity,  
22 Judge.

23 First with regard to the severance issue, as I  
24 detailed in the papers, there are two separate grounds for the  
25 severance of the counts. The first ground pursuant to

1 Rule 8(a) is the fact that even though he's charged with three  
2 narcotics offenses, there are actually two separate schemes.

3           You have the vehicle scheme, if I may call it that,  
4 and the apartment scheme. There are essential differences  
5 between those two as I outline in our papers -- different  
6 packaging, different drugs, different quantities, different  
7 locations, etc. For those reasons alone, similar to some of  
8 the cases I cite, bank robberies, for example, they should be  
9 separated.

10           In addition and independently, there is also  
11 significant prejudice. It is our contention, respectfully,  
12 that each of the schemes should stand on their own before a  
13 judge and jury with regard to the evidence with regard to the  
14 government's burden to prove beyond a reasonable doubt each  
15 scheme standing alone.

16           If the jury hears evidence relating to both these  
17 schemes -- and there's not a lot of evidence that we're aware  
18 of, at least at this time -- then there is a very real risk of  
19 significant prejudice, of spillover prejudice, with regard to  
20 the jury being prejudiced by evidence relating to one scheme  
21 versus the other.

22           I think it's especially significant here because of  
23 the relatively smaller amount of evidence that's typically  
24 available in these cases. First of all, we would request a  
25 severance of Count One.

1 THE COURT: Let's argue each part separately.

2 MR. SIGNORELLI: Of course, your Honor.

3 THE COURT: So, when you're finished with the  
4 severance argument, I'll hear Mr. Denton.

5 MR. SIGNORELLI: Other than what I've just said, we  
6 rest on our papers with regard to the severance argument.  
7 Thank you.

8 THE COURT: I haven't read the complaint. Is there an  
9 allegation in the complaint of the date that the officers  
10 inspected the apartment?

11 MR. SIGNORELLI: Yes. It's August 24, 2016.

12 THE COURT: That's in Count Three.

13 MR. SIGNORELLI: And Two.

14 THE COURT: With regard to Count Two, the automobile  
15 search, was it the same day?

16 MR. SIGNORELLI: The automobile search I believe is  
17 Count One. That would be August 13. It's an 11-day time  
18 difference.

19 THE COURT: Let me ask Mr. Denton.

20 What are the acts that are actionable in each of the  
21 three counts?

22 MR. DENTON: Your Honor, so with respect to Count One,  
23 it's the defendant's alleged possession of crack cocaine in the  
24 vehicle that he was operating -- it was registered to his  
25 girlfriend -- on August 13.

1 With respect to Count Two, it was the defendant's  
2 possession of certain quantities, in some respects, trace  
3 quantities of narcotics, that were found in his residence which  
4 he shared with the same girlfriend on or about August 24.  
5 Obviously, the government's position is that was a continuing  
6 offense; that that's the date of discovery, not necessarily the  
7 sole date of commission.

8 THE COURT: When you say "trace," what do you mean by  
9 that? Trace elements.

10 MR. DENTON: Your Honor, there were scales that were  
11 recovered from the apartment that were tested that the  
12 New York City Police Department lab identified detectable  
13 quantities of controlled substances. So it's simply charged as  
14 a detectable quantity.

15 THE COURT: Is there any relationship with the crack  
16 in the auto?

17 MR. DENTON: We believe that there is in that one of  
18 the scales tested positive for cocaine.

19 THE COURT: There were traceable elements of cocaine  
20 on the scale?

21 MR. DENTON: Yes, your Honor.

22 THE COURT: There were a number of bags of cocaine  
23 found, crack cocaine, found in the car on August 13 in a false  
24 compartment. Right?

25 MR. DENTON: Yes, your Honor. It wasn't a false

1 compartment. It was sort of a naturally existing space where  
2 there's a door on the side of the car that let's you get to the  
3 gas cap. It wasn't the sort of hidden compartment we commonly  
4 consider a trap.

5 THE COURT: So part of your proof would be that this  
6 defendant was cooking crack, storing drugs, and the like in the  
7 apartment. And that connects with the drugs found in the car?

8 MR. DENTON: Yes, your Honor. I don't know whether we  
9 would allege specifically that he was manufacturing the crack  
10 cocaine as opposed to simply storing or preparing it for  
11 distribution. But in sum and substance, that's correct.

12 THE COURT: The sales were part of the packaging?

13 MR. DENTON: Yes, your Honor.

14 THE COURT: What does Count Three allege?

15 MR. DENTON: Count Three alleges that the defendant  
16 used the apartment that was his residence as "a stash house" or  
17 a location where narcotics were packaged and prepared for  
18 distribution.

19 THE COURT: Mr. Signorelli, what counts do you want to  
20 sever from which counts?

21 MR. SIGNORELLI: We ask for the severance of Count  
22 One, which is the vehicle-related count, from Counts Two and  
23 Three, which are the apartment-related counts.

24 There's no evidence that the apartment was in any way  
25 used for the storage, possession, or distribution of crack

1 cocaine in that no crack cocaine was found in the apartment.  
2 There were no crack cocaine baggies similar to the baggies  
3 found in the vehicle.

4 We really do believe that they stand apart from one  
5 another, completely different and very low-level narcotics  
6 offenses. There really isn't any connection between the two,  
7 other than speculation on the government's part, and it really  
8 is speculation.

9 THE COURT: I think I can rule on this issue now.  
10 There are liberal standards for joinder of offenses, the  
11 United States against Wilson, 512 F. App'x 75 and 76, Second  
12 Circuit 2013. Although I shouldn't cite a summary decision  
13 from the Court of appeals as a precedent, the rule is so  
14 generally known that any number of cases could be cited.

15 Federal Rules of Criminal Procedure Rule 8(a) provides  
16 that two or more offenses may be joined in a single indictment  
17 if the offenses charged are the same or similar character or  
18 based on the same act or transaction or connected with or  
19 constitute parts of a common scheme or plan.

20 Here we have the defendant and his girlfriend involved  
21 in the possession violation in the car and in the apartment.  
22 The dates, although separated by a few days, are really very  
23 close together.

24 What happened in the apartment on August 24 is not  
25 something new. It connects back to what happened in the car on

1 August 13. So I think there's sufficient similarity to provide  
2 for the joinder of pleadings.

3 As to the issue of prejudice, I need to be careful  
4 that the evidence on both does not suggest some habit of the  
5 defendant that would be otherwise impermissible, but I will  
6 entertain appropriate instructions from defense counsel to  
7 avoid the issue of prejudice.

8 So I don't think there will be prejudice at this  
9 stage. If the case proceeds and evidence shows that there will  
10 be prejudice, a renewal of the motion can be made. I don't  
11 think it will be necessary. So that part of the motion is  
12 denied.

13 The next part would be a suppression of evidence.

14 Go ahead, Mr. Signorelli.

15 MR. SIGNORELLI: Thank you, Judge. There are several  
16 subparts to the suppression of evidence. I'll take each one in  
17 the same order as they appear in the reply papers.

18 First an overview. There are essentially five  
19 separate searches that are involved in this case. Two were  
20 executed pursuant to a search warrant. Three were warrantless  
21 searches.

22 With regard to the vehicle, number one, there were  
23 three searches of the vehicle. The first two were warrantless.  
24 The third was with a warrant. With regard to the very first  
25 search which happened at the time of the stop of the vehicle 45



1 minutes after the 911 callers had reported a shooting in the  
2 area, the police officers conducted a warrantless search of two  
3 occupants of the car, including my client, and Nydrique Jones.

4 They found nothing on their person relating to guns or  
5 narcotics, and they found nothing in the vehicle, in the  
6 interior of the vehicle within reach of the two occupants.

7 We are not contesting at this time the lawfulness of  
8 that very first search, given the nature of the 911 calls, etc.  
9 It is the second warrantless search that is, to say the least,  
10 hotly contested in this case, your Honor.

11 We are contending, with a great deal of evidence, that  
12 the second warrantless search, which the government has  
13 described as an inventory search, was totally illegal for two  
14 reasons:

15 First, the arrest of my client was illegal. It should  
16 not have happened. It was that arrest which led to the police  
17 bringing, seizing, impounding, and searching the vehicle at the  
18 precinct without a warrant.

19 The police have primarily justified the arrest of my  
20 client on the ground that at that time he had known bench  
21 warrants, outstanding warrants of arrest against him. They say  
22 the same thing about Nydrique Jones. The government has  
23 forcefully alleged that issue.

24 We have presented to this Court with overwhelming  
25 documentary evidence in the form of Core Alerts, fingerprint

1 summaries, hearsay statements from their state lawyers, and  
2 they're willing to do a first-hand account if necessary. I  
3 don't think it is in this case. It all says the same thing,  
4 this overwhelming, extremely reliable evidence.

5 Contrary to the police statements to the government  
6 and in this court in the criminal complaint, though there is no  
7 other support evidence -- and I would emphasize that point --  
8 there were no known arrest warrants for Mr. Tabb and also the  
9 same can be said for Mr. Jones. That's very, very important.

10 Now, the government has brought up an arrest warrant  
11 from a 2005 summons for having an open container of alcohol,  
12 and they say that this is the evidence that there was a known  
13 warrant out for my client's arrest at the time of the stop.

14 On the contrary. There is no evidence whatsoever,  
15 including no sworn evidence from any police officer, that they  
16 knew about that particular warrant at the time of the stop.  
17 Indeed, the documentary evidence indicates that they couldn't  
18 have known.

19 The fact that they might have gone through court files  
20 after the fact to justify this after the fact doesn't save them  
21 from the illegal arrest that was effected of my client. The  
22 same argument again for Mr. Jones and the three summonses.

23 In fact, the only document the government presents to  
24 support the police officers' false account -- I don't say that  
25 lightly or allege that lightly -- is a document I've never seen

1 before in my practice. Nor have the state attorneys that I  
2 consulted who have represented Mr. Tabb and Mr. Jones in the  
3 state court proceeding. That's called a DAS snapshot. Their  
4 are own document doesn't support their theory.

5 There is no outstanding warrant listed for the  
6 particular summons they say support the arrest of Tabb and  
7 Jones that evening. All it lists is these very old cases.

8 THE COURT: The sequence was the 911 call, the  
9 identification of the defendant and the car. Then what  
10 happened?

11 MR. SIGNORELLI: It wasn't so much an identification  
12 of the defendant. They identified a shooter having completely  
13 different clothing and different skin tone or color as my  
14 client. My client was not identified as the shooter at all.  
15 The opposite is the case.

16 They reported a shooting in the area. They also  
17 connected that shooting to the BMW vehicle. Forty-five minutes  
18 later, the police stopped the car. They find no firearms in  
19 the interior of the car, no firearms on the person of Mr. Tabb  
20 and the occupant of the car, Mr. Jones. They then proceed --

21 THE COURT: But they were looking.

22 MR. SIGNORELLI: They looked thoroughly.

23 THE COURT: Did they arrest the two?

24 MR. SIGNORELLI: They did. They arrested the two  
25 after they found nothing.

1 THE COURT: They did the search at a precinct house;  
2 right?

3 MR. SIGNORELLI: That's right.

4 THE COURT: So they identified the car, and I guess  
5 the occupants were then told to drive the car to the precinct  
6 house? What happened?

7 MR. SIGNORELLI: According to the police -- we  
8 respectfully disagree with that account -- we think it's not  
9 true -- they say that with regard to Tabb and Jones, there are  
10 outstanding warrants for their arrest. That's what they say at  
11 that time, which is 4:30 in the morning on August 13.

12 THE COURT: That's what they used to justify taking --

13 MR. SIGNORELLI: That was their primary justification.  
14 They also said my client didn't have a driver's license. They  
15 leave out the fact that he had a legitimate driver's permit.  
16 He was with a licensed driver. Normally and ordinarily, that  
17 is a ticket, not an arrest that takes place, if there's no  
18 other accompanying violation of the law.

19 THE COURT: If there's a violation, the police can do  
20 anything, a ticket or summons or arrest.

21 MR. SIGNORELLI: The important thing is they found no  
22 firearms, and the primary --

23 THE COURT: The search for firearms uncovered the  
24 crack.

25 MR. SIGNORELLI: It was the second search, the

1 so-called "inventory search" at the precinct after the arrest  
2 of Mr. Tabb and Mr. Jones and after the car --

3 THE COURT: First there has to be a lawful arrest.  
4 Without a lawful arrest, there can't be a lawful search.

5 Is that right, Mr. Denton?

6 MR. DENTON: That is correct. Separate and apart from  
7 the argument that the government makes that the officers were  
8 entitled to search the vehicle.

9 THE COURT: As a matter of law, you don't have a right  
10 to search a car unless there's special reason to do so: A, an  
11 arrest; B, a warrant; C, I guess a violation or a suspicion of  
12 a violation of supervised release.

13 MR. DENTON: The only quarrel I would take with  
14 your Honor's categories is that under the automobile exception,  
15 a warrant is not required. Only probable cause to search the  
16 vehicle.

17 THE COURT: That follows an arrest usually.

18 MR. DENTON: It certainly can, yes, to the extent  
19 there is a valid arrest and seizure of a vehicle.

20 THE COURT: The car is not suspected of shooting  
21 anybody. The whole suspicion is because there were shots fired  
22 and the 911 call identified a black male wearing a gray T-shirt  
23 and gray shorts and shots being fired in the vicinity of 216th  
24 Street and White Plains Road in the Bronx. Also they  
25 identified that the black male with the firearm had been

1 driving a white BMW with a specified license plate. So the car  
2 is identified.

3 What's the next thing that happens in a nearby area,  
4 217th Street and Bronxwood Avenue? They stop the vehicle.  
5 They identify the defendant in the driver's seat and another  
6 male black individual in the front passenger seat as persons  
7 fitting the description.

8 What's the next thing that happened?

9 MR. DENTON: At that point, your Honor, essentially a  
10 security pat-down was done with respect to both defendants.  
11 The officers queried information from the NYPD about their  
12 names and pedigree information and identified that both  
13 individuals had outstanding warrants for their arrest.

14 They were placed under arrest, and the vehicle was  
15 brought back to the precinct.

16 THE COURT: So that's the arrest. The arrest is then  
17 the basis for the search of the car.

18 MR. DENTON: Yes.

19 THE COURT: Mr. Signorelli said that arrest was  
20 invalid.

21 Right, Mr. Signorelli?

22 MR. SIGNORELLI: That's correct, your Honor.

23 THE COURT: Why was it invalid? Because the  
24 police officers identified the car and, when calling it in,  
25 were told that there were active arrest warrants. They can act

1 on that; right?

2 MR. SIGNORELLI: We think it's a lie from the police.

3 THE COURT: Which?

4 MR. SIGNORELLI: The fact that they're saying there  
5 are active arrest warrants. To the extent that the only  
6 evidence before --

7 THE COURT: The police who said that we can arrest  
8 these fellows because there were active arrest warrants were  
9 lying?

10 MR. SIGNORELLI: We do believe that's a falsehood. I  
11 don't make that accusation lightly. I make it on the basis of  
12 the only evidence before your Honor indicates no arrest  
13 warrants, no outstanding warrants. This is compelling  
14 documentary evidence that --

15 THE COURT: If those arrest warrants were not actually  
16 outstanding.

17 MR. SIGNORELLI: Indeed even worse we believe. A  
18 hearing will --

19 THE COURT: Two things. Were they actually  
20 outstanding? Were there arrest warrants actually outstanding?

21 MR. SIGNORELLI: I believe that is an open question,  
22 with regard to Mr. Tabb anyway, because, as I indicate in the  
23 reply papers, there are real validity problems with that arrest  
24 warrant from 2005. I cite a list --

25 THE COURT: Whether it was a valid warrant or an

1 invalid warrant, was it outstanding?

2 MR. SIGNORELLI: We don't believe it was. More to the  
3 point --

4 THE COURT: Mr. Denton, was there one outstanding?

5 MR. DENTON: Yes, your Honor. The government has  
6 produced a warrant and a Bronx court docket showing that the  
7 warrant was outstanding.

8 THE COURT: Why is that a false document?

9 MR. SIGNORELLI: As I detail in the papers, first of  
10 all, the warrant they produced has numerous errors on it.  
11 First of all, the date of birth is 2015. The name is wrong.  
12 The first name is wrong. There are five or six other errors  
13 with that warrant.

14 THE COURT: You want to examine the arresting  
15 policeman to see if he spoke a lie when he said, I called, and  
16 I was told there was a valid warrant?

17 MR. SIGNORELLI: That's right. That is the essential  
18 issue. It's not whether there was some warrant in some old  
19 court docket which the police and the government are now  
20 claiming justified this arrest after the fact. It's the old  
21 Watergate saying, what did they know, and when did they know  
22 it.

23 At 4:30 in the morning, our compelling evidence shows  
24 that they could not have known about this warrant because the  
25 alert summary sheet, which we attach as an exhibit to our



1 papers, the fingerprint summary sheet, which we attach to our  
2 papers, indicates zero warrants for both Mr. Tabb and  
3 Mr. Jones.

4 THE COURT: Mr. Denton, is there any basis outside of  
5 the warrant to justify the in-camera inspection of the car?

6 MR. DENTON: Yes, your Honor. We believe that the  
7 specificity of the 911 call identifying the vehicle gave the  
8 police probable cause to believe that evidence would be found  
9 in it.

10 THE COURT: It seems to me from hearing you I need to  
11 have an evidentiary hearing.

12 MR. DENTON: Your Honor, if I may, I would like to  
13 correct a couple of things that Mr. Signorelli has said and  
14 address whether a hearing is necessary here.

15 I would note a couple of different things. First of  
16 all, Mr. Signorelli raises this argument in his reply brief,  
17 which the government did not have an opportunity to respond to,  
18 that the critical question is not whether there was a valid  
19 warrant but whether the officers knew.

20 If your Honor believes that that's a relevant  
21 question, the government will be happy to provide supplemental  
22 briefing, but the Supreme Court has expressly rejected  
23 Mr. Signorelli argument in *Utah v. Strieff* --

24 THE COURT: If the arresting officer reasonably and  
25 honestly believes that there was an outstanding arrest warrant,

1 he can go ahead and effect the arrest. That's that case, isn't  
2 it?

3 MR. DENTON: No, your Honor. That's herring. That's  
4 a different question. In Utah v. Strieff, which was decided  
5 last term, the Supreme Court held that where the police  
6 unlawfully detained an individual and then later discovered  
7 that there is a valid arrest warrant for him, what they knew at  
8 the time of the detention has no bearing on the suppression  
9 because if there is a valid basis for the arrest, the arrest  
10 was legal ab initio. So the question of what --

11 THE COURT: Do you take issue with that,  
12 Mr. Signorelli?

13 MR. SIGNORELLI: We don't believe the arrest was legal  
14 at all because they're basing the arrest on the fact that they  
15 say there's an outstanding warrant --

16 THE COURT: And this outstanding warrant that  
17 Mr. Denton has produced you don't count as a valid warrant?

18 MR. SIGNORELLI: We think there are real questions  
19 about its validity. It's not even certified. It's not even  
20 stamped. It has different information.

21 THE COURT: What's the exhibit?

22 MR. DENTON: It's Government Exhibit B, your Honor.

23 THE COURT: B as in boy?

24 MR. DENTON: Yes, your Honor.

25 MR. SIGNORELLI: When your Honor is ready, I'd like to

1 go through the list of errors in that warrant.

2 THE COURT: Go ahead. I'm ready.

3 MR. SIGNORELLI: First Mr. Tabb's first name is  
4 misspelled as Z-i-m-a-n. Second his date of birth on this  
5 warrant is listed --

6 THE COURT: Excuse me. It says Z-i-m-m-i-a-n, the  
7 People of the State of New York v. Zimmian Tabb.

8 MR. SIGNORELLI: It's Exhibit B, your Honor, of the  
9 government's papers.

10 THE COURT: It starts out, Police Officer Austin  
11 Hieronymi.

12 MR. DENTON: Your Honor, I think that may be  
13 Mr. Signorelli exhibit. I'm not sure he actually attached the  
14 warrant.

15 MR. SIGNORELLI: I'm actually referring to the exhibit  
16 the government attached.

17 THE COURT: I was looking at your exhibit.

18 MR. SIGNORELLI: I didn't want to overburden the  
19 Court.

20 THE COURT: I have that. The warrant of arrest on  
21 Ziman Tabb.

22 MR. SIGNORELLI: If I may proceed, your Honor.

23 THE COURT: So Ziman Tabb is a different person than  
24 Zimmian Tabb.

25 MR. SIGNORELLI: Even worse than that. His date of

1 birth is listed as 1-1-0001, which is not a date of birth. His  
2 age is listed as 2015, which is not his age. Third, his race  
3 is indicated as unknown. Fourth, there's no other descriptive  
4 information. That's all laid out there.

5 Fifth, and most telling of all perhaps, there's a fax  
6 notation at the top of this document which tells me that the  
7 police first discovered this warrant at the government's  
8 request in November of 2016, two or three months after the stop  
9 and in response to the government's queries because the defense  
10 found this allegation of an open arrest warrant.

11 THE COURT: Mr. Denton, I don't feel comfortable  
12 relying on a document where there are those discrepancies.

13 MR. DENTON: Your Honor, I don't think that that is  
14 accurate. I think if you look at Government Exhibit A, you'll  
15 see the summons which, unless Mr. Signorelli is contending that  
16 that summons was not issued to Mr. Tabb, Government Exhibit A  
17 contains sort of similar errors, but it explains why the  
18 warrant may be flawed.

19 It contains the same address. It's omitting his date  
20 of birth. This is the underlying summons. So the information  
21 there completely tracks the information on the warrant,  
22 including that address, which is an address that Mr. Tabb has  
23 provided in the past.

24 THE COURT: What does this summons mean?

25 MR. DENTON: This is the underlying violation that was

1 the basis for the issuance of the warrant when the defendant  
2 failed to appear.

3 THE COURT: This led to the warrant in Exhibit B?

4 MR. DENTON: That's correct.

5 THE COURT: So this was outstanding?

6 MR. DENTON: Yes, your Honor.

7 THE COURT: Under the Supreme Court case you cite,  
8 this existing warrant justified the arrest?

9 MR. DENTON: That's correct.

10 MR. SIGNORELLI: We disagree, your Honor.

11 THE COURT: I know you disagree. I rule in favor of  
12 the government.

13 MR. SIGNORELLI: No hearing on this?

14 THE COURT: I don't think you need a hearing.

15 Discrepancies are irrelevant.

16 What other information do you have to justify the  
17 in-camera inspection of the car?

18 MR. DENTON: Well, your Honor, once the arrest was  
19 validly effected, we think that the officers were entitled to  
20 perform an inventory search on the car.

21 THE COURT: Let's say I don't think this. The basis  
22 of the arrest was also the description. And what else?

23 MR. DENTON: The basis for the arrest was the arrest  
24 warrant, your Honor. We're not taking the position that --

25 THE COURT: So this document, A and B.

1 MR. DENTON: Yes, your Honor, together with C, which  
2 is the court document showing that this was in fact unanswered  
3 essentially as of the date of the arrest. So it was still a  
4 pending warrant.

5 MR. SIGNORELLI: Your Honor, if I could just say  
6 something with regard to this arrest warrant. I've hardly ever  
7 asked a court to reconsider something. I move on. In this  
8 case, if I may be given a brief opportunity.

9 THE COURT: Go ahead.

10 MR. SIGNORELLI: There is no evidence that the  
11 police officers relied on this warrant at the time --

12 THE COURT: There doesn't have to be. The  
13 Supreme Court rule says it doesn't have to be relied upon.  
14 It's in effect ex post facto, that which exists, even though  
15 you didn't know it, justifies.

16 MR. SIGNORELLI: There's another problem with this  
17 arrest warrant. I list this in my reply papers. There's no  
18 indication it is a legitimate arrest warrant certified by the  
19 clerk of the court. There's no indication at all that this is  
20 a legitimate arrest warrant which the police officers relied  
21 upon.

22 THE COURT: All you've seen is a photo; right?

23 MR. SIGNORELLI: We have other photos for the Nydrique  
24 Jones arrest warrant which we attach as exhibits. You can  
25 clearly see the clerk's stamp, and there is no stamp, at least

1 on the copy that we have here.

2 THE COURT: I think if you want to prove this existed,  
3 Mr. Denton, you have to prove it properly.

4 MR. DENTON: Your Honor, we can attempt to obtain a  
5 certified copy and provide it to the Court and, if necessary,  
6 provide a copy for Mr. Signorelli in-camera inspection.

7 THE COURT: I think if you provide it for  
8 Mr. Signorelli in-camera inspection, that should suffice. If  
9 he continues to challenge it as a valid court document, it  
10 would have to be brought to my attention. I'm ruling on the  
11 basis that this is a valid document, but you've got to prove  
12 that.

13 MR. DENTON: Yes, your Honor.

14 MR. SIGNORELLI: There's also another troubling thing  
15 about this case, and the government attacks my advocacy. They  
16 say my client returned to court and received an ACD on  
17 August 31, 2016, on this very case.

18 THE COURT: Which case? The underlying case?

19 MR. SIGNORELLI: The 2005 summons. As my client has  
20 declared under the penalties of perjury in his reply  
21 declaration, he never was in court that day. So something  
22 happened that day. Some person received an ACD, which is an  
23 adjournment in contemplation of dismissal --

24 THE COURT: Where is the ACD?

25 MR. SIGNORELLI: The ACD is referred to in

1 Government's Exhibit -- it's in a docket sheet, Government's  
2 Exhibit C. The government has alleged again --

3 THE COURT: What are you saying? That this shows that  
4 the underlying warrant was not pending at the time of the  
5 in-camera inspection because there had been an ACD?

6 MR. SIGNORELLI: There's something very wrong with the  
7 fact that this docket reflects an ACD being received by a  
8 defendant, and my client is declaring under the penalties of  
9 perjury that he wasn't in court that day to receive an ACD or  
10 any other day to receive an ACD. So there's something very  
11 wrong with regard to that.

12 THE COURT: Let me understand. He received an ACD.  
13 That meant that the underlying warrant was no longer  
14 outstanding.

15 MR. SIGNORELLI: At the end of August 2016. Whatever  
16 happened in court that day with that defendant, it wasn't my  
17 client. It wasn't Mr. Tabb.

18 THE COURT: So this ACD came after the events alleged  
19 in the indictment?

20 MR. SIGNORELLI: After the stop of the vehicle.  
21 Suddenly this --

22 THE COURT: It's not relevant.

23 MR. SIGNORELLI: The relevance is --

24 THE COURT: It's not relevant.

25 MR. SIGNORELLI: There's a second independent reason,



1 your Honor, with regard to the suppression of the evidence from  
2 the warrantless search of the vehicle at the precinct. That is  
3 it was not only an improper arrest, as we allege, but also an  
4 improper search; that they went beyond the patrol guide.

5 The patrol guide not only lists several designated  
6 areas that are legitimate areas that the police officers may  
7 conduct an inventory search, but number two, they say areas  
8 that could contain valuable valuables so the police can't be  
9 accused of stealing the items and so on and so forth, to avoid  
10 lawsuits and things like that.

11 As we contend, we believe that the police officers  
12 went well beyond an inventory search and did an investigatory  
13 search. Indeed, in one of their police reports, which I attach  
14 as Exhibit N to my main moving papers -- I believe it's N.  
15 It's the last exhibit. It's Exhibit O, the last exhibit of our  
16 main moving papers attached to my declaration.

17 The police officers have acknowledged in their police  
18 reports that they're conducting an investigatory search, not an  
19 inventory search. I believe that is a very telling admission  
20 that they brought that car back, not to do an inventory search  
21 for valuables pursuant to the patrol guide, but they did it to  
22 search warrantlessly for evidence of a crime.

23 Again, the government has the burden of proof --

24 THE COURT: They could have performed the inventory  
25 search to pick up any contraband that exists.

1 MR. SIGNORELLI: A proper inventory search would have  
2 turned up no contraband.

3 THE COURT: Is the purpose of an inventory search in  
4 part to find and list and keep secure any contraband?

5 MR. SIGNORELLI: According to the patrol guide and  
6 existing case law, the purpose of an inventory search is to  
7 search for areas where valuables may be found so that the  
8 police officers can't be accused of theft.

9 THE COURT: Is it also to secure any contraband that  
10 may be found?

11 MR. SIGNORELLI: If it's found through an otherwise  
12 legitimate inventory search, of course the police officers can  
13 recover contraband, but that begs the question here is a gas  
14 tank compartment area on the outside of a car a place where  
15 anyone -- we don't have any evidence from the government as  
16 to --

17 THE COURT: I know it's part of what's done in an  
18 inventory. This is a compartment of the car already there.  
19 It's not any secret hatch, but people sometimes keep things  
20 there. They can tape it to the side of the car in the gas tank  
21 area. Sometimes searching that entire area is sufficient. I  
22 hold that's not a ground for suppression.

23 MR. SIGNORELLI: So, your Honor, then our next item on  
24 our pretrial motions is the search of the apartment.

25 Now, we believe that there are disputed issues of

1 material fact regarding why that search was conducted, who  
2 initiated the search, who organized the search, who organized  
3 the search, who asked for the search. The government contends  
4 that it was a legitimate search of someone on supervised  
5 release without any sworn evidence.

6 We disagree with that contention. We believe that the  
7 search was conducted for non probation-related objectives. It  
8 was really conducted by the firearms-related law enforcement  
9 officers.

10 The problem there is very simple. They didn't get a  
11 warrant to search the home. This is not the stalking horse  
12 theory which the government makes much ado about. Our  
13 contention is very simple. Regardless of the particular  
14 standard that the Second Circuit follows, at the very least,  
15 the search must be for probation-related objectives.

16 Without any responsible evidence, testimony from the  
17 relevant police officers, it's impossible for the government to  
18 contend conclusively and to argue that there were no disputed  
19 issues of material fact that this was done for  
20 probation-related objectives when we don't know who initiated  
21 it, who asked for it, what were the reasons for the search, who  
22 organized it, who carried it out. There's no evidence in the  
23 record with regard to any of those important questions that an  
24 evidentiary hearing would address.

25 So, for those reasons, as well as all the reasons in

1 the main and reply motion papers, we would ask for an  
2 evidentiary hearing on the legitimacy and the lawfulness of  
3 still another warrantless search, in this case, the apartment,  
4 for those reasons, your Honor. Thank you.

5 THE COURT: Mr. Denton.

6 MR. DENTON: Your Honor, candidly, what.

7 Mr. Signorelli contends are material issues are, by virtue of  
8 the controlling case law, which he suggests the Court ignore,  
9 immaterial.

10 The Second Circuit has explicitly said that it is  
11 immaterial who conducts the search. As long as probation is  
12 there, that it is immaterial who asks for the search, as long  
13 as there is a probation objective that is apparent.

14 In Reyes, the Second Circuit said that it is difficult  
15 to imagine a situation where a probation officer conducting a  
16 home visit in conjunction with law enforcement officers, based  
17 on a tip that the probation officer has no reason to believe  
18 conveys intentionally false information about a supervisee's  
19 illegal activities, would not be pursuing legitimate supervised  
20 release objectives.

21 So this is a very straightforward situation. The  
22 police conveyed a tip that the probation officers had no reason  
23 to believe was false that the probationer was in possession of  
24 narcotics and was suspected of involvement in a shooting. That  
25 is perfectly legitimate as a grounds --

1 THE COURT: Violations of parole, supervised release,  
2 are appropriate bases for searches.

3 MR. DENTON: Yes, your Honor.

4 THE COURT: I rule --

5 MR. SIGNORELLI: Your Honor, if I may just on the  
6 Reyes case which the government cites. Excuse me for  
7 interrupting. If I may.

8 THE COURT: Go ahead.

9 MR. SIGNORELLI: Reyes also says that the law permits  
10 such cooperation, and that cooperation is between probation  
11 officers and other law enforcement officers, as long as the  
12 probation officers are pursuing legitimate probation-related  
13 objectives. That is the essential issue here.

14 THE COURT: The suspicion of a violation of harboring  
15 narcotics is a violation of a condition of parole and  
16 supervision. That's a legitimate objective of the probation  
17 officer.

18 So I deny this portion of the motion pursuant to the  
19 authority of the United States against Reyes, 283 F.3d 446 at  
20 page 471, Second Circuit 2002, holding that the stalking horse  
21 theory does not exist as a matter of law since the objectives  
22 and duties for probation officers and law enforcement personnel  
23 are often parallel and frequently intertwined.

24 The next part is a demand for a bill of particulars.

25 MR. SIGNORELLI: Yes, your Honor. If I may.

1 THE COURT: This is a sufficient indictment. At this  
2 point, the defendant is not entitled to have a  
3 particularization of the evidence that was used by the  
4 government to prove guilt. The indictment is sufficient notice  
5 of the crime. So this part of the motion is denied.

6 That denies the defendant's motion.

7 What's next, Mr. Denton?

8 MR. DENTON: Your Honor, I think, barring anything  
9 else from defense counsel, we should set a trial date in this  
10 matter.

11 MR. SIGNORELLI: Your Honor, we haven't gotten a  
12 legitimate arrest warrant from the government yet. So what I  
13 would suggest is that we have a relatively short period of time  
14 to give the government an opportunity of producing a legitimate  
15 arrest warrant from the 2005 summons because we don't have one  
16 yet.

17 THE COURT: How much time do you need for that,  
18 Mr. Denton?

19 MR. DENTON: Your Honor, I think if we have two weeks,  
20 if there's any reason why the Bronx can't get us one in that  
21 time, we'll report to the Court the reasons why.

22 THE COURT: Okay.

23 MR. SIGNORELLI: What I would suggest is that a short  
24 additional period of time after that so I can discuss the case  
25 with my client. I would suggest that we have a conference

1 before we asked you all trial. We'll agree to an exclusion of  
2 time because there's another issue that I'd like to bring up,  
3 an evidentiary issue, if I may, your Honor.

4 THE COURT: What's the issue?

5 MR. SIGNORELLI: The issue is the examination of the  
6 fingerprint evidence. The government has written a letter to  
7 your Honor. Your Honor may recall --

8 THE COURT: I recall.

9 MR. SIGNORELLI: -- that I asked for fingerprint  
10 examination of the drug evidence found in the vehicle because  
11 we contend it did not belong to my client.

12 The defense consented to the government's suggestion  
13 or request that they have their own police officers, police  
14 department, do the fingerprint examination. We consented to  
15 that. It removes chain of custody problems and so on and  
16 so forth.

17 THE COURT: So the government is not using any  
18 fingerprint evidence I gather. Right, Mr. Denton?

19 MR. DENTON: That's correct, your Honor.

20 MR. SIGNORELLI: Even more so, they have indicated  
21 that they're not having the police department, barring a court  
22 order, examine the narcotics evidence at all for fingerprint  
23 evidence. Now, it is true that plastic is not as good a  
24 substance as other materials for fingerprints, but fingerprints  
25 can be left on plastic items.

1 THE COURT: So what do you want?

2 MR. SIGNORELLI: I want to propose a compromise.

3 THE COURT: What do you want?

4 MR. SIGNORELLI: There are 75 bags containing the  
5 crack cocaine that were found in the vehicle. The government  
6 says it would take too long for the police department to  
7 examine those bags. They indicate three months.

8 We would like a representative sample of one third, 25  
9 of those bags, examined. If they can't find fingerprints, so  
10 be it. At least a good-faith effort was made because there are  
11 important issues in this case.

12 THE COURT: Are you CJA appointed?

13 MR. SIGNORELLI: I am, your Honor.

14 THE COURT: Why don't you ask for an expert?

15 MR. SIGNORELLI: Well, the government has addressed  
16 that too. I'd be happy to, but they initially offered to have  
17 their own police department do it. In their letter to  
18 your Honor, they say that CJA funds should not even be used to  
19 do that. I'd be happy to get an expert.

20 THE COURT: I don't think it's a proper use of CJA  
21 funds, but you're the lawyer. If you have a reasonable  
22 suspicion that there could be fingerprints that would be  
23 exonerating, I'll let you do it. It's not going to hold up the  
24 trial.

25 MR. SIGNORELLI: Unless the government --



1 THE COURT: A reasonable sample would be 10 percent.

2 There are 75 bags. Examine 10 of them.

3 MR. SIGNORELLI: Examine 10?

4 THE COURT: You can pick them up.

5 MR. SIGNORELLI: If the government reconsiders its  
6 position to have the police department do it, we would consent  
7 to that. I think it would be a lot easier as far as expense  
8 and chain of custody.

9 THE COURT: You're not very trusting of the police  
10 department.

11 MR. SIGNORELLI: The police department laboratory,  
12 forensic laboratory. I don't have any --

13 MR. DENTON: To be clear, your Honor, I don't think  
14 the government will be doing that.

15 THE COURT: I didn't think you were going to do it.

16 MR. DENTON: I would also note that we think that  
17 while Mr. Signorelli is free to proceed with his expert however  
18 he wants, the notion that a partial sample could somehow  
19 constitute evidence may be an issue we need to litigate.

20 THE COURT: What's a partial sample?

21 MR. DENTON: If he's going to test only some of the  
22 bags but not others.

23 THE COURT: He's looking for someone else's  
24 fingerprints.

25 MR. SIGNORELLI: I'm proposing a compromise.

1 THE COURT: He's looking for the presence of somebody  
2 else's fingerprints. The chances of finding somebody else's  
3 fingerprints are slim on plastic.

4 What else are you looking for? Are you wanting a  
5 conference because you think there's an opportunity to plead?

6 MR. SIGNORELLI: I would like to -- if and when we  
7 receive --

8 THE COURT: The defendant is entitled to explore the  
9 possibility of pleading guilty.

10 MR. SIGNORELLI: I would like to discuss all options  
11 with my client prior to the next conference.

12 THE COURT: I don't really have objection to having  
13 another conference before we set a trial date.

14 MR. SIGNORELLI: I would suggest a conference within  
15 30 days, if that's convenient for your Honor and the  
16 government.

17 THE COURT: Don't ask me then for fingerprints.

18 MR. SIGNORELLI: If we pursue that, it will be this  
19 week, your Honor, with a proposed order.

20 THE COURT: May 5 at 11:00.

21 MR. SIGNORELLI: Yes, your Honor.

22 THE COURT: That will be the date, if nothing else  
23 happens, to fix a trial date.

24 MR. SIGNORELLI: The government's arrest warrant,  
25 barring anything unforeseen, within two weeks from now?

1 THE COURT: Within two weeks.

2 Is there anything else?

3 MR. DENTON: Not from the government, your Honor.

4 MR. SIGNORELLI: Nothing further.

5 THE COURT: We'll see you again May 5 at 11:00. The  
6 government moves to exclude time?

7 MR. DENTON: Yes, your Honor.

8 THE COURT: Without objection, so ordered.

9 MR. SIGNORELLI: Thank you, Judge.

10 THE COURT: Thank you, folks.

11 (Adjourned)

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